

Before the
FEDERAL COMMUNICATION COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
)	
Petition for Waiver of Section)	WC Docket No. 05-175
61.45(d) or, in the Alternative, a)	
Declaratory Ruling, To Treat End)	
User Common Line Settlement)	
Payments As Exogenous Costs)	

COMMENTS OF AT&T CORP.

Pursuant to the Commission's *Public Notice*,¹ AT&T submits these comments in response to the *Petition*² seeking a waiver of Section 61.45(d) of the Commission's rules, 47 C.F.R. § 61.45(d), or, in the alternative, a declaratory ruling to allow the petitioning incumbent local exchange carriers ("LECs") to treat end user common line ("EUCL") settlement payments to independent payphone service providers as exogenous price cap adjustments.

¹ *Pleading Cycle Established For Petition For Waiver Of Section 61.45(d) Or, In The Alternative, Declaratory Ruling To Treat End User Common Line Settlement Payments As Exogenous Costs*, WC Docket No. 05-175, Public Notice, DA 05-1100 (released April 25, 2005) ("*Public Notice*").

² *Petition For Waiver Of Section 61.45(d) Or, In The Alternative, Declaratory Ruling To Treat End User Common Line Settlement Payments As Exogenous Costs*, WC Docket No. 05-175 (filed April 13, 2005) ("*Petition*"). *Petitioners*, on behalf of their telephone operating companies, include BellSouth, Cincinnati Bell, Qwest, Sprint, SBC and Verizon.

INTRODUCTION

This proceeding arises from the Commission's rules governing the charges that LECs may levy against payphone users under the Commission's access charge rules. Those rules, which the Commission adopted in 1982, permit LECs to assess end user common line charges ("EUCLs") on payphone "end users."³ Beginning in 1984, independent payphone service providers ("IPPs") began operating payphones, acting as a "middleman" between the LEC and the end user.⁴ Several LECs then began imposing EUCLs on the IPPs.⁵ The Commission subsequently endorsed the LECs' practices, but that order was reversed by the D.C. Circuit, which held that the IPPs were not "end-users," and thus could not be charged EUCLs under the Commission's existing rules.⁶ In 2000, the Commission issued a remand order holding that IPPs cannot be considered end-user customers, and were not subject to EUCL assessments by LECs.⁷ The Commission further ordered the LECs to refund

³ *Petition* at 5-6.

⁴ *Communications Vending Corporation of Arizona, Inc., et al v. Citizens Communications Company*, 17 FCC Rcd. 24,201, ¶ 6 (2002) ("*2002 EUCL Order*").

⁵ *Petition* at 6 ("[A]fter the Commission authorized independent payphone provider services, these providers almost always connected their payphones to ordinary local exchange access lines, which they bought out of Joint Petitioners' local exchange tariffs. As a natural consequence, the Joint Petitioners billed these providers for the charges normally associated with such lines, including the EUCL charge.")

⁶ *C.F. Communications v. FCC*, 128 F.3d 735 (D.C. Cir. 1997).

⁷ *C.F. Communications Corp., et al. v. Century Telephone of Wisconsin, Inc., et al.*, Memorandum Opinion and Order on Remand, 15 FCC Rcd. 8759 (2000) ("*EUCL Liability Order*").

the EUCL charges collected from IPPs.⁸ The instant *Petition* asks the Commission to allow the LECs to recover those refund amounts from current customers through exogenous price cap adjustments on the ground that if the LECs had not assessed EUCLs on IPPs from 1995-1997, they would have charged higher common line rates to their other customers.

There are substantial questions whether these EUCL settlements qualify for exogenous treatment, in that the recovery of past undercharges is not usually permitted absent unusual circumstances,⁹ and price increases to current customers would appear to be prohibited by the rule against retroactive ratemaking.¹⁰

Nonetheless, to the extent that the Commission were inclined to allow an exogenous adjustment on the ground that the LECs had somehow detrimentally relied on the agency's interpretation of their right to recover EUCLs from IPPs, the Commission should ensure that such amounts are recovered from ratepayers in the most pro-competitive and competitively neutral manner. Specifically, the Commission should ensure that such amounts are recovered through subscriber line charges, and *not* through

⁸ *EUCL Liability Order* ¶¶ 26-35; see also *2002 EUCL Order*, *supra*.

⁹ *FPC v. Tennessee Gas Trans. Co.*, 371 U.S. 145, 152-53 (1962); accord *1997 Annual Access Tariff Filings*, Memorandum Opinion and Order on Reconsideration, 13 FCC Rcd. 10597, ¶ 8 (1998) ("*1997 Access Tariff Order*").

¹⁰ *Nader v. FCC*, 520 F.2d 182, 202 (D.C. Cir. 1975).

carrier common line charges or presubscribed interexchange carrier charges, which the Commission has sought to phase out due to their “inefficiencies.”¹¹

ARGUMENT

The Commission has plainly stated its objective that any “intercarrier compensation approach must be competitively and technologically neutral.”¹² And the Commission has long-recognized that recovering common line costs directly from the LECs’ end-user customers, through subscriber line charges (“SLCs”), is the most competitively neutral, pro-competitive and efficient mechanism for recovering such costs.¹³

By contrast, the Commission has endeavored to “phase out” other forms of common line cost recovery mechanisms, including the carrier common line charge (“CCLC”) and presubscribed interexchange carrier charge (“PICC”), because these mechanisms, which recover common line costs indirectly through charges to interexchange carriers (“IXCs”), are *not* competitively neutral and send confusing and inefficient market signals.

¹¹ *E.g., Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; End User Common Line Charges*, First Report and Order, 12 FCC Rcd. 15983, ¶ 69 (1997).

¹² *E.g., Developing a Unified Intercarrier Compensation Regime*, Further Notice of Proposed Rulemaking, 20 FCC Rcd. 4685, ¶ 33 (2005).

¹³ *See, e.g., Id.* ¶¶ 8-9; *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long Distance Users, Federal-State Joint Board On Universal Service*, 15 FCC Rcd. 12962, ¶¶ 64-112 (2000) (“*CALLS Order*”).

CALLS Order ¶¶ 64-112; *see also Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; End User Common Line Charges*, First Report and Order, 12 FCC Rcd. 15983, ¶ 69 (1997) (recovering loop costs from IXC's is "an inefficient cost-recovery mechanism and implicit subsidy"). Accordingly, if the Commission permits Petitioners to implement exogenous cost increases to recover payphone refunds, it should require the LECs to recover those costs by increasing subscriber line charges for a time period sufficient to recover those costs. The Commission could allow a modest increase in the SLC cap for the few companies that may not otherwise be able to recover their payphone settlements costs.

CONCLUSION

For these reasons, to the extent that the Commission permits exogenous cost treatment of payphone refunds, the Commission should ensure that those costs are recovered only through SLCs charged to end users, and not through CCLCs or PICCs assessed on IXC.

Respectfully submitted,

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May 16, 2005

CERTIFICATE OF SERVICE

I, Judy Sello, do hereby certify that on this 16th day of May, 2005, a copy of the foregoing "Comments of AT&T Corp." was served by U.S. first class mail, postage prepaid, on the parties named below.

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